



DEPARTMENT OF PUBLIC WORKS

REQUEST FOR PROPOSALS  
FOR PROFESSIONAL DESIGN SERVICES  
FOR THE DESIGN OF

**LAMBERT PARK PHASE 2**  
**(CIP NO. 819)**

SEPTEMBER 2016

IMPORTANT DATES

RFP ISSUED	SEPTEMBER 1, 2016
REQUEST FOR INFORMATION DEADLINE: 5:00 PM	SEPTEMBER 27, 2016
RELEASE OF INFORMATION REQUESTED	OCTOBER 3, 2016
PROPOSAL DUE DATE/SUBMISSION DEADLINE: 5:00 PM	OCTOBER 10, 2016
AWARD DATE	NOVEMBER 2016
APPROXIMATE START DATE	NOVEMBER/DECEMBER 2016

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ATTACHMENT A – LAMBERT PARK MASTR PLAN

EXHIBIT 1 – PROFESSIONAL SERVICES AGREEMENT SAMPLE

## **1.0 Overview**

The City of El Monte (the City) has made numerous improvements over the past several years to Lambert Park. These improvements have been made possible through funds awarded to the City from Air Quality Management District (AQMD) and the Conservation Corp. Improvements completed through 2016 include: 1) Installation of Watershed Gardens; 2) Installation of a Permeable Pavers Plaza; and 3) Installation of Picnic Shelters; 4) Installation of passive improvements and park amenities within the Watershed Gardens; and 5) Environmental Testing for purposes of abating and demolishing two existing buildings, (maintenance room/restrooms and youth hut).

The City recently commissioned the preparation of a New Conceptual Plan for Lambert Park and this plan was approved by City Council in a meeting on August 2, 2016. This Conceptual Plan (See Attachment A – Lambert Park Master) will be the basis for future improvements to Lambert Park.

The City of El Monte (the City) is soliciting proposals from qualified and experienced proposers to secure architectural and engineering design services for the preparation of plans, specifications, and cost estimates (PS&E) and related construction documents, and to provide construction administration services during the construction phase for the LAMBERT PARK IMPROVEMENTS PHASE-2 (CIP NO. 819). The plans and cost estimates will be comprehensive for all improvements proposed on the approved Lambert Park Conceptual Plan (Refer to Attachment “A”). It is the intent to have a complete set of plans and phase construction using remaining funds from the AQMD Grant and construct improvements when funding is available. The Design Project is to be funded using funds awarded to the City of El Monte. This project is subject to state and federal regulations and procurement requirements.

At the of release of this RFP The City has approximately \$900,000 remaining on the AQMD grant and is seeking future funding from Los Angeles County for construction of improvements and new fields. At this time the City desires to develop a comprehensive plan for future improvements to Lambert Park. Construction of these improvements may be phased based on future funding availability.

## 2.0 Scope of Services

The City is seeking a qualified proposer to provide technical professional services related to the design of parks and recreation improvement projects. The proposer applying should have significant experience in preparing plans, specifications, cost estimates and obtaining any required permits for these types of projects. The objective of the Project is to complete the design and secure approval of all plans, specifications, estimates, and permits from all applicable agencies in order to immediately thereafter advertise, bid, and award a construction contract.

The City had commissioned and approved a Conceptual Master Plan (see Attachment “A” - Lambert Park Master Plan) and this plan will be the basis for design services in this RFP.

The following tasks are identified for the scope of services:

**Task 1** – Have an initial scoping meeting with the City to finalize the specifics of the Project in accordance with Attachment “A” – Lambert Park Master Plan. Perform Utility Research/Other Research and Coordination. Conduct required surveys/design surveys and prepare detailed base map for use in developing design plans. In summary this task shall include the following services:

- 1) Meetings (number of meetings):
  - a. Scoping/Kick-off (2)
  - b. Utility Company (2)
  - c. Stakeholders - Final Design (2)
  - d. City Council (2)
  - e. City Staff (5)
- 2) Develop and maintain Project Schedule for Approval based on City approval process and grant restrictions
- 3) Research, Survey, and Base Map preparation

**Task 2** – Develop all design plans based on Task 1 and Attachment “A” – Lambert Park Master Plan. Project Plans: Prepare design plans for the construction of:

- 1) Upon completion of Base Map, conduct second scoping meeting with City to discuss any deviation from initial scoping meeting / approved Conceptual Plan that may be required based on information obtained during Task 1.
- 2) New Restroom/Concession/Staff Building. Concession portion designed for Level 3 Concession.

- 3) New Plaza
- 4) Renovate Existing Building
- 5) New Playground Areas; Tot Lot (Age 2-5) & Children (Age 5-12)
- 6) New Multi-use Sport Fields
- 7) New Field Lighting
- 8) New Outdoor Fitness Stations
- 9) New Hardscape Improvements and Amenities
- 10) New Landscape Improvements
- 11) New Utilities/Utility Improvements to Support the proposed improvements
- 12) Funding to construct all improvements has not yet been secured. Should full funding not be available at the time the design plans and specifications are approved, it may be necessary to construct the improvements in phases based on available funding. Proposers shall provide services to separate the plans into multiple phases for construction (Assume 3 phases). Phasing shall take into account the time gap between phases and a maximum of 3 phases. **Fee to this subtask shall be identified as a separate line item under Task 2.**

Design Services shall follow and include Schedule and Schedule Control covered under Section 3, Item 8. Additionally, the scope of professional services shall include coordination with all applicable regulatory agencies and outside utility companies if required for the design, execution and completion of this project. Allow 3 weeks for each City review.

Plans shall be submitted at the following stages of completion for City review and comment: 30%, 65%, 95%, 100% (Final).

**Task 3 – Project Specifications at 30%, 65%, 95%, and 100% submittal:** Prepare specifications in conformance with the current Standard Specifications for Public Works Construction (Greenbook) and other applicable agency standard plans, specifications, and guidance documents in order to obtain plan approval. Provide the required permits, standards, and reference materials to be included in the City's standard contract documents. Every item of work must be fully covered including a measurement clause and a payment clause.

**Task 4 – Construction Estimate:** Prepare an engineer's construction estimate for the designed Project at the 65% submittal and 100% submittal. Cost estimates shall have quantities and unit

prices with back-up calculations for all quantities. The consultant shall verify current unit prices at time of final plan approval.

**Task 5 – Permitting and Regulations:** Develop and manage the approval process for all required permits and environmental documents. The consultant shall observe all laws, rules, and regulations concerning environmental permitting and the scope of professional services shall include all steps necessary in the project development and permitting process to fully entitle the project to move into the construction phase.

- 1) Document, design, and incorporate environmental requirements (i.e., CEQA documentation, etc.), mitigation measures, NPDES requirements (including adherence to MS4 LID requirements), BMPs, air/water quality, and erosion/sediment control into the Project construction documents as required.
- 2) Provide a signed check-off list certifying that all environmental clearances/permits have been completed and all mitigation measures have been incorporated into the PS&E prior to the advertisement of the project for construction.
- 3) Proposers shall incorporate the City of El Monte's Tree Protection and Preservation Ordinance, Chapter 14.03 of the El Monte Municipal Code (EMMC) as applicable. The deliverables provided to the City shall conform to those regulations to ensure a complete and conforming project. The consultant and its subconsultants shall comply with Public Works Greenbook and EMMC in the preparation of full, complete, and accurate PS&E. Note: The City shall supply the successful proposer with a recent tree survey report for Lambert Park.
- 4) Proposers shall incorporate all federal, state, and local laws, rules, and regulations concerning public works as applicable. The deliverables provided to the City shall conform to those regulations to ensure a complete and conforming project. The consultant and its subconsultants shall comply with Public Contract Code Section 10120 in the preparation of full, complete, and accurate PS&E.

**Task 6 – Construction Support Services:** Provide engineering services prior to, during, and following construction including:

- 1) Attend a pre-construction meeting and provide clarification of contract documents as needed.
- 2) Assist the City with Request for Information responses.
- 3) Provide review of the Contractor's submittals for conformance with the contract documents.
- 4) Subsequent to completion of construction, the consultant shall provide Mylar plots of

revised drawings incorporating all as-built revisions clouded and noted in the revision block using the Contractor's record red lines. The Project drawings should be stamped "Project Record Drawings". Transmit original Mylar Record Drawings and two CDs containing all project drawings including AutoCAD files as well as PDF versions.

All data, documents, and other products used or developed during the project will become the property of the City.

### 3.0 Proposal Format

All proposals shall include the following information and comply with the associated page limit restrictions. Note that 1 page includes the front side of an 8.5x11 sheet of paper and the cover does not constitute a page.

- 1) Cover Letter. Maximum 1 page cover letter signed by an officer of the firm, binding the proposer to all of the commitments made in the submittal. The letter shall include name, address and phone number of the person authorized to represent the proposer and shall include the following Statement:
  - a. I HAVE READ UNDERSTOOD, AND AGREED TO ALL STATEMENTS IN THIS REQUEST FOR PROPOSAL AND ACKNOWLEDGE RECEIPT OF ALL ADDENDUMS/AMENDMENTS AS WELL AS TO THE TERMS, CONDITIONS, AND ATTACHMENTS REFERENCED.
- 2) Proposer's Background. Maximum 2 page background on the proposer and its area(s) of professional expertise relevant to this RFP. An additional 1 -page may be included to highlight the background of each proposed subconsultant to be used by the proposer and the specific task(s) or functions the subconsultant will perform.
- 3) Qualifications and Experience of Proposer's Personnel. Maximum 3 page summary of the relevant experience, work history, training, education and special certifications of the proposer's personnel who will be performing the professional services contemplated under this RFP on the proposer's behalf. Briefly discuss the Consultant team's qualifications and experience with projects of a similar magnitude and nature. Proposers shall provide identical information for all subconsultants' performing any of the tasks or services contemplated under this RFP on the proposer's behalf. The summary shall also include the office location of key personnel proposed to work on this contract. Relevant experience can include your company's overall experience, experience with similar projects and the experience of individuals on your proposed team. Show how your experience relates to the demands of this project.
- 4) Project Approach. Maximum 3 page summary of the proposed approach to designing this park improvement project. The proposer shall explain the way in which the proposer will timely complete all of the tasks called for under the RFP along with an estimate of the time it will take to complete each task. Include a brief overview of the Consultant's understanding of the project. The content will reflect the particular viewpoint of the Consultant.
- 5) Proposed Personnel. Maximum 2 page resume for the project manager and 1 page resume for each of the other key personnel, including subconsultants, which will be performing the majority of the work on this project/contract. Resumes for corporate leadership should not be included unless said individuals will be performing substantial



work on this project. The designated Project Manager shall be the primary contact with the City during the contract period and shall function in that capacity while employed by the firm. In addition, the City must approve changes of personnel.

- 6) Quality Assurance/Quality Control Procedures. Maximum 1 page brief description of the consultant's approach to implement a Project-specific Quality Control Plan. Describe the major elements and steps of the quality assurance / quality control (QA/QC) program and procedures that will be followed for each deliverable (i.e. engineering discipline review, coordination review, constructability review, QA/QC control review, etc.).
- 7) References. Each proposal must include at least 3 public agency references going back at not more than five (5) years from the issuance of this RFP in which the proposer was engaged to perform tasks similar to those requested under this RFP. References should place an emphasis on past projects in which the personnel to be used by proposer for this project were deployed. The references should include the name, title and contact information of the public agency officer or employee responsible for overseeing the proposer's work.
- 8) Schedule and Schedule Control. Maximum 2 page schedule detailing when the specific Tasks will be completed. Proposers should factor in additional time that may be required due to reasonably foreseeable types of delays. The proposal shall identify all critical task sequencing and critical paths required to ensure that the work is timely and completely completed. The Consultant shall submit a detailed project schedule outlining the tasks, activities, deliverables, milestone and duration required for the completion and submission of each of the deliverables identified in the Scope of Services. The schedule shall also factor in reasonable review and feedback periods for draft deliverables by City staff as well as any and all legally mandated review and comment period, including those that may be required by third party regulatory agencies.
- 9) Fee Schedule/Cost Proposal. Maximum 3 page detailed cost estimate for performing specific Tasks identified in the RFP and a schedule of rates for each proposed personnel that may be tasked to complete the Project. The Task-specific cost estimate shall include an estimate of the number of hours per staff member by proposed task and clearly identify an hourly rate schedule for the proposed staff. The proposal shall indicate the compensation structure for performing specific services identified in Tasks 1 through 6 (e.g. flat lump sum or hourly rate structure) for each Task. The proposal shall also include costs and expenses related to photocopying, postage, travel, etc. (i.e. Reimbursement expenses). To the extent that a proposal contemplates the use of subconsultants to perform any one or more of the above described tasks on the proposer's behalf, the proposal shall include a List of Subconsultants identifying all subconsultants and state the fee for each subconsultant in the Fee Schedule under the appropriate Task under which the service will be provided. In so far as the proposer's proposal contemplates an increase in compensation rates or charges prior to the completion of Tasks 1 through 6, and during the term of the portion of the PSA or any

extension term, the proposal shall clearly indicate when such increases will take effect and by how much.

- a. The Fee Schedule/Cost Proposal shall be delivered in a separate sealed envelope which is plainly marked on the outside "Lambert Park Phase II (CIP NO. 819)" and addressed to the above-mentioned location. The envelope shall contain the name and address of the consultant clearly marked on the outside.

The City reserves the right to delete specific task(s).

#### **4.0 Evaluation Criteria**

Each proposal shall be evaluated on the basis of the proposer's expertise, experience and training and the expertise of its key personnel along with prior contracting history, approach to the project, cost, proposed schedule and compliance with the RFP requirements including the terms of the attached PSA. Each such factor shall be weighted by the City as follows:

- 1)** Expertise, Experience & Training Plus Prior Contracting History (25%) – The expertise, experience and training of the proposer and its key personnel and previous experience with similar work in similar fields and qualifications and depth of the staff that will perform the work on this project. This factor includes evaluation of the proposer's prior contracting history, including the review of the proposer's certifications relating to false claims, debarment and civil litigation.
- 2)** Project Approach (40%) – The proposer's responsiveness in developing a comprehensive plan while meeting regulatory requirements and the City's specific needs.
- 3)** Cost (15%) – The proposed compensation structure (inclusive of hourly rates of compensation, pass through costs and subconsultant costs) for the performance of Tasks 1 through 8, inclusive of its proposed not-to-exceed sum. The proposers proposed strategy for containing costs incurred by City while still meeting the objectives and standards set forth under the RFP.
- 4)** Schedule (10%) – Proposal for completing the project in a timely manner, inclusive of the proposer's ability to identify critical paths for the timely and competent completion of all work contemplated under the RFP.
- 5)** Compliance with RFP (10%) – The ability of the proposer to comply with all instructions set forth under this RFP as well as the proposer's ability to agree to all of the terms and conditions of the attached PSA without modification, particularly as relates to indemnification, insurance requirements and standards of care.

## **5.0 Selection Process**

A selection committee, comprised of City staff will review the proposals. Proposals will be ranked on qualifications and the selection committee may choose to interview several of the top ranked proposers. However, at its sole discretion the selection committee may dispense with interviews and select a proposer to perform the work.

## 6.0 Proposal Requirements

Proposals must be submitted using the following methods:

Three (3) printed copies of the proposal must be received prior to the Submission Deadline.

Proposals shall be submitted to the following address:

City of El Monte  
Department of Public Works – Engineering Division  
City Hall West  
11333 Valley Boulevard  
El Monte, CA 91731-3293

ATTN: Elaine Jeng, P.E.  
Public Works & Utilities Director/City Engineer

Subject: RFP – Lambert Park Phase II – CIP NO. 819

Proposals may be submitted via personal delivery, overnight courier (e.g., FedEx or UPS) or U.S. Mail. Proposals must be received by or before the Submission Deadline. Proposals that are deposited with an overnight courier or post marked prior to the Submission Deadline but received after the Submission Deadline will not be considered by the City.

Submitted proposals shall be maintained as confidential records of the City up to the Submission Deadline. Proposers may withdraw, modify and/or resubmit a proposal prior to the Submission Deadline but not after. Proposers shall be bound to the terms of their proposal following the Submission Deadline, however, the City, in its sole and absolute discretion, reserves the right to accept post deadline modifications if it is determined that such modifications are in the best interests of the City. The City also reserves the right to waive minor non-substantive informalities or allow the proposer to correct them.

- 1) Proposers shall be solely and exclusively responsible for all costs incurred in connection with the preparation and submission of the proposals; demonstrations; interviews; preparation of responses to questions and requests for additional information; for contract discussions; or for anything in any way related to this RFP. The City is not liable for any costs incurred by a proposer in response to this RFP. Whether or not a proposer is awarded a contract pursuant to this RFP, no proposer shall be entitled to reimbursement for any costs or expenses associated with the proposer's participation in this RFP process.
- 2) Late proposals will not be considered.
- 3) The City reserves the right to reject any and all proposals received as a result of this RFP. The City's potential award of a contract will not be based on any single factor nor will it be based solely or exclusively on the lowest cost proposal. If a contract is

awarded, it will be awarded to the proposer who in the judgment of the City has presented an optimal balance of relevant experience, technical expertise, price, quality of service, work history and other factors which the City may consider relevant and important in determining which proposal is best for the City.

- 4) The City reserves the right to cancel or modify this RFP. There is no guarantee that the City will award contract.
- 5) The City reserves the right to investigate the qualifications of any proposer under consideration including proposed subcontractors and parties otherwise related to the proposer and require confirmation of information furnished by a proposer, or require additional evidence of experience and qualifications to provide the services or otherwise discharge the obligations required by this RFP.
- 6) Following the Submission Deadline, the City, pursuant to the California Public Records Act (Govt. Code Section 6250 et seq.) reserves the right to make copies of all submitted proposals available for inspection and copying by any interested member of the public, except to the limited extent the City determines that any information contained in a proposal is legally privileged under the California Public Records Act. By submission of a proposal, proposers acknowledge and agree that their proposal and any information contained therein may be disclosed by the City to interested members of the public, including other proposers.
- 7) The City reserves the right to approve or disapprove of particular subcontractors, joint venture partners, or other proposed team members.
- 8) The City reserves the right to evaluate responses in terms of the best interests of the City, applying criteria provided in this RFP and any other criteria the City, in its sole discretion, deems pertinent.
- 9) By the submission of a proposal, each proposer accepts and agrees to execute a written Professional Services Agreement (PSA) in the form attached hereto as Exhibit 1. By submission of a proposal, each proposer agrees to execute a PSA with the City in the form attached hereto as Exhibit 1, inclusive of all stated terms and conditions relating to indemnification, required insurance and standard of care requirements. If a proposer is unable to agree to any of the terms or conditions of the PSA in the form attached hereto, the proposer must identify the provision(s) in question and provide an explanation as to why the proposer cannot comply with such provisions. If a proposer's objection to a certain provision of the PSA is merely a question of added cost, the proposer shall indicate in the proposal the difference in cost associated with complying with the provision(s) versus the cost associated with the City's waiver or modification of the provision(s). The City shall be under no obligation to make modifications to the PSA after a contract has been awarded and proposers shall be deemed to have incorporated all costs associated with compliance with the PSA into their proposal. A

proposer's inability to comply with one or more provisions of the PSA shall be a factor that will be considered by the City in determining which proposal will serve the best interest of the City when all other factors are taken into account.

- 10) All proposals must remain valid for a minimum period of ninety (90) calendar days after the Submission Deadline. Responses may not be modified or withdrawn by the proposer during this period of time except in accordance with this RFP and with written permission granted by the City.
- 11) All questions or requests for clarification shall be submitted via email to Alan Palermo at [apalermo@elmonteca.gov](mailto:apalermo@elmonteca.gov) by the REQUEST FOR INFORMATION DEADLINE. All questions received by this deadline will be addressed and posted on the City's website ([www.ci.el-monte.ca.us](http://www.ci.el-monte.ca.us)) by the RELEASE OF INFORMATION REQUESTED DATE.
- 12) If it becomes necessary to revise any part of this RFP, an addendum will be posted on the City's website. It shall be the sole responsibility of the proposer to check for any addendums to the RFP that may be issued by the City.
- 13) It is presumed that each proposer has read and is thoroughly familiar with the scope of services to be performed under this RFP.
- 14) The proposer agrees that, if a contract is awarded to a proposer, the proposer shall make no claim against the City or any of the funding agencies because of any estimate or statement made by any employees, agents, or consultants of the City which may prove to be erroneous in any respect.
- 15) Proposers may withdraw their proposal prior to the Submission Deadline.

The site plan for the El Rovia Avenue project is a detailed architectural drawing showing a large green field, two baseball diamonds, and various buildings and landscaping. The plan includes labels for streets (Emery Street, McGirk Avenue, El Rovia Avenue), landmarks (Waterford Landscape, El Rovia Avenue), and specific areas (3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J, 3K, 3L, 3M, 3N, 3O, 3P, 3Q, 3R, 3S, 3T, 3U, 3V, 3W, 3X, 3Y, 3Z). The plan also shows a large parking lot, a playground, and a building with a red roof. The plan is oriented with Emery Street at the top and McGirk Avenue on the left. El Rovia Avenue runs along the bottom and right sides of the site. The plan includes a north arrow and a scale bar. The plan is a professional architectural drawing with a high level of detail and accuracy.

## JUNE 22, 2016



For internal purposes only:

Contract No. [REDACTED]

JAIVILL



20 [REDACTED]

## PROFESSIONAL SERVICES AGREEMENT

(Engagement: *Replace with Description of Engagement*)

(Parties: The City of El Monte – *Replace with Name of Consultant*)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2016 (hereinafter, the “Effective Date”), by and between the CITY OF EL MONTE, a municipal corporation (“CITY”) and [REDACTED] (hereinafter, “CONSULTANT”). For the purposes of this Agreement CITY and CONSULTANT may be referred to collectively by the capitalized term “Parties.” The capitalized term “Party” may refer to CITY or CONSULTANT interchangeably.

### RECITALS

This Agreement is made and entered into with respect to the following facts:

WHEREAS, CITY wishes to engage CONSULTANT to provide *Generally Describe the Type of Work to be Performed in Abbreviated Fashion* [REDACTED]; and

WHEREAS, CITY’s in-house personnel is presently unable to perform the specialized services and tasks contemplated under this Agreement; and

WHEREAS, CONSULTANT possesses the specialized training, skill, expertise and experience required to perform the services contemplated under this Agreement; and

WHEREAS, CONSULTANT agrees to perform the various services and tasks set forth under this Agreement subject to the terms and conditions set forth herein; and

WHEREAS, execution of this Agreement was approved by the City Council at its [REDACTED] meeting of [REDACTED] 20 [REDACTED] under Agenda Item [REDACTED].

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, CITY and CONSULTANT agree as follows:

1.

### ENGAGEMENT TERMS

1.1. SCOPE OF SERVICES: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONSULTANT agrees to perform the services and tasks set forth under that certain proposal dated [REDACTED] 20 [REDACTED] and entitled [REDACTED] which is attached hereto as Exhibit “A” (hereinafter referred to as the “Scope of Services”). CONSULTANT further agrees to furnish to CITY all labor, materials,

For internal purposes only:

Contract No. [REDACTED]

tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Services. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Services shall hereinafter be referred to generally by the capitalized term "Work."

1.2. PROSECUTION OF WORK: The Parties agrees as follows:

- A. Time is of the essence of this Agreement and each and every provision contained herein. The Work shall be commenced within [REDACTED] ( ) calendar days of CITY's issuance of a written Notice to Proceed and shall be completed at the earliest feasible time practicable, but in no event by a date later than [REDACTED] from the date of CITY's issuance of a Notice to Proceed (hereinafter, the "Completion Date"). CITY, in its reasonable discretion, may grant CONSULTANT additional time to complete the Work, provided (i) no grant of additional time shall exceed a period of [REDACTED] ( ) calendar days from the original Completion Date; and (ii) CONSULTANT shall have provided CITY with a written request for additional time no less than [REDACTED] ( ) calendar days prior to the original Completion Date, which notice shall specify the reason(s) why additional time is needed, how much additional time is needed and what measures CONSULTANT has taken to mitigate the need for additional time. The granting of such additional time by the CITY shall in no way entitle CONSULTANT to compensation in excess of the Contract Price, defined below, in so far as the need of additional time is not reasonably attributable to CITY;
- B. CONSULTANT shall perform the Work continuously and with due diligence so as to complete the Work by the Completion Date. CONSULTANT shall cooperate with CITY and in no manner interfere with the work of CITY, its employees or other consultants, contractors or agents;
- C. CONSULTANT shall not claim or be entitled to receive any compensation or damage because of the failure of CONSULTANT or its subcontractors or subconsultants, to have related services or tasks completed in a timely manner;
- D. CONSULTANT shall at all times enforce strict discipline and good order among CONSULTANT's employees; and
- E. CONSULTANT, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.

1.3. EXTRA WORK; COMPENSATION FOR EXTRA WORK:

- A. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. For the purposes of this Agreement, the term "Extra Work" means any additional work, services or tasks not set forth in the Scope of Work but later determined by City to be necessary. Consultant shall not undertake nor shall Consultant be entitled to compensation for Extra Work without the prior written authorization of the City. Extra Work does not include any labor, materials, tools, supplies, equipment, services, tasks or incidental and customary

work undertaken to competently perform and timely complete the Work and related tasks set forth in the Scope of Work.

- B. Payments for any Extra Work shall be made to Consultant on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally.

1.4. COMPENSATION: Consultant shall be compensated for the performance of the services and tasks that comprise the Work in accordance with the hourly compensation schedule set forth under page [REDACTED] of the Scope of Work under the heading [REDACTED]. The foregoing notwithstanding, Consultants' total compensation for performing the Work shall not exceed the aggregate sum of [REDACTED] (\$[REDACTED]) (hereinafter, the "Contract Price"). The Parties agree that the Contract Price includes compensation for all labor, materials, tools, supplies, equipment, business licenses and such other incidental and customary work necessary to competently perform and fully complete the Work as well as compensation for all specifically delineated expenses set forth in the Scope of Work. All related costs, travel expenses, fees in the development of the Work shall be burdened by the Consultant and not be reimbursable to the City. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the Contract Price unless the availability of funds for the added expenditure is first reviewed by the Finance Department of the City and unless such added expenditure is specifically approved in advance and in writing by the City.

1.5. PAYMENT OF COMPENSATION: Following the conclusion of each calendar month, CONSULTANT shall submit to CITY an itemized invoice indicating the services and tasks performed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONSULTANT's monthly compensation is a function of hours worked by CONSULTANT's personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each task and service performed and a grand total for all services performed. Within thirty (30) calendar days of receipt of each invoice, CITY shall notify CONSULTANT in writing of any disputed amounts included in the invoice. Within forty-five (45) calendar day of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT.

1.6. ACCOUNTING RECORDS: CONSULTANT shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. CITY shall have the right to access and examine such records, without charge, during normal business hours. CITY shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

1.7. ABANDONMENT BY CONSULTANT: In the event CONSULTANT ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all

tasks set forth in the Scope of Services, CONSULTANT shall deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONSULTANT in the performance of this Agreement. Furthermore, CONSULTANT shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which CITY may incur as a result of CONSULTANT's cessation or abandonment.

2.

PERFORMANCE OF AGREEMENT

2.1. CITY'S REPRESENTATIVES: The CITY hereby designates \_\_\_\_\_, the City Manager and \_\_\_\_\_, the Public Works & Utilities Director (hereinafter, the "CITY Representatives"), to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief CITY Representative. The CITY Representatives or their designee shall act on behalf of the CITY for all purposes under this Agreement. CONSULTANT shall not accept directions or orders from any person other than the CITY Representatives or their designee.

2.2. CONSULTANT REPRESENTATIVE: CONSULTANT hereby designates [REDACTED] to act as its representative for the performance of this Agreement (hereinafter, "CONSULTANT Representative"). CONSULTANT Representative shall have full authority to represent and act on behalf of the CONSULTANT for all purposes under this Agreement. CONSULTANT Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONSULTANT Representative shall constitute notice to CONSULTANT.

2.3. COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONSULTANT agrees to work closely with CITY staff in the performance of the Work and this Agreement and shall be available to CITY staff and the CITY Representatives at all reasonable times. All work prepared by CONSULTANT shall be subject to inspection and approval by CITY Representatives or their designees.

2.4. STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONSULTANT represents, acknowledges and agrees to the following:

- A. CONSULTANT shall perform all Work skillfully, competently and to the highest standards of CONSULTANT's profession;
- B. CONSULTANT shall perform all Work in a manner reasonably satisfactory to the CITY;
- C. CONSULTANT shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code section 1090 and the Political Reform Act (Government Code section 81000 et seq.);

- D. CONSULTANT understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- E. All of CONSULTANT's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and
- F. All of CONSULTANT's employees and agents (including but not limited subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to CITY for copying and inspection.

The Parties acknowledge and agree that CONSULTANT shall perform, at CONSULTANT's own cost and expense and without any reimbursement from CITY, any services necessary to correct any errors or omissions caused by CONSULTANT's failure to comply with the standard of care set forth under this Section or by any like failure on the part of CONSULTANT's employees, agents, contractors, subcontractors and subconsultants. Such effort by CONSULTANT to correct any errors or omissions shall be commenced immediately upon their discovery by either Party and shall be completed within seven (7) calendars days from the date of discovery or such other extended period of time authorized by the CITY Representatives in writing and in their sole and absolute discretion. The Parties acknowledge and agree that CITY's acceptance of any work performed by CONSULTANT or on CONSULTANT's behalf shall not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that CITY has relied upon the foregoing representations of CONSULTANT, including but not limited to the representation that CONSULTANT possesses the skills, training, knowledge and experience necessary to perform the Work skillfully, competently and to the highest standards of CONSULTANT's profession.

2.5. ASSIGNMENT: The skills, training, knowledge and experience of CONSULTANT are material to CITY's willingness to enter into this Agreement. Accordingly, CITY has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONSULTANT or on behalf of CONSULTANT in the performance of this Agreement. In recognition of this interest, CONSULTANT agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONSULTANT's duties or obligations under this Agreement without the prior written consent of the CITY. In the absence of CITY's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.

2.6. CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONSULTANT or under CONSULTANT's strict supervision. CONSULTANT will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. CITY retains CONSULTANT on an independent contractor basis and not as an employee. CONSULTANT reserves the right to

perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONSULTANT's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of CITY's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONSULTANT are not employees of CITY and shall at all times be under CONSULTANT's exclusive direction and control. CONSULTANT shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.

2.7. REMOVAL OF EMPLOYEES OR AGENTS: If any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the CITY Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONSULTANT, a threat to persons or property, or if any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the CITY, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONSULTANT and shall not be re-assigned to perform any of the Work.

2.8. COMPLIANCE WITH LAWS: CONSULTANT shall keep itself informed of, and in compliance with, all applicable federal, state or local laws to the extent such laws control or otherwise govern the performance of the Work. CONSULTANT's compliance with applicable laws shall include, without limitation, compliance with all applicable Cal/OSHA requirements.

2.9. NON-DISCRIMINATION: In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.

2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONSULTANT and all persons retained or employed by CONSULTANT are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of CITY. CONSULTANT shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONSULTANT and all persons retained or employed by CONSULTANT shall have no authority, express or implied, to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, CITY, whether by contract or otherwise, unless such authority is expressly conferred to CONSULTANT under this Agreement or is otherwise expressly conferred by CITY in writing.

### 3. INSURANCE



3.1. DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONSULTANT will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONSULTANT shall procure and maintain the following insurance coverage, at its own expense:

- A. Commercial General Liability Insurance: CONSULTANT shall procure and maintain Commercial General Liability Insurance (“CGL Coverage”) as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
- B. Automobile Liability Insurance: CONSULTANT shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
- C. Workers’ Compensation Insurance/ Employer’s Liability Insurance: A policy of workers’ compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONSULTANT and CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONSULTANT in the course of carrying out the Work contemplated in this Agreement.
- D. Errors & Omissions Insurance: For the full term of this Agreement and for a period of three (3) years thereafter, CONSULTANT shall procure and maintain Errors and Omissions Liability Insurance appropriate to CONSULTANT’s profession. Such coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall be endorsed to include contractual liability.

3.2. ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the CITY and CITY’s elected and appointed officials, officers, employees, agents and volunteers as additional insureds.

3.3. REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers who, according to the latest edition of the Best’s Insurance Guide, have an A.M. Best’s rating of no less than A:VII. CITY may also accept policies procured by insurance carriers with a Standard & Poor’s rating of no less than

BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the CITY Representatives are authorized to authorize lower ratings than those set forth in this Section.

3.4. PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONSULTANT shall be primary to any coverage available to CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.

3.5. WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONSULTANT or CONSULTANT's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITY.

3.6. VERIFICATION OF COVERAGE: CONSULTANT acknowledges, understands and agrees that CITY's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding CITY's financial well-being and, indirectly, the collective well-being of the residents of the CITY. Accordingly, CONSULTANT warrants, represents and agrees that it shall furnish CITY with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to CITY in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the CITY if requested.** All certificates of insurance and endorsements shall be received and approved by CITY as a condition precedent to CONSULTANT's commencement of any work or any of the Work. Upon CITY's written request, CONSULTANT shall also provide CITY with certified copies of all required insurance policies and endorsements.

#### 4.

#### INDEMNIFICATION

4.1. The Parties agree that CITY, the CITY's elected and appointed officials, officers, employees, agents and authorized volunteers (hereinafter, the "City Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the City Indemnitees with the fullest protection possible under the law. CONSULTANT acknowledges that CITY would not enter into this Agreement in the absence of CONSULTANT's commitment to indemnify, defend and protect CITY as set forth herein.

4.2. Work of Contractor's Design Professionals Services: The duty to indemnify, defend and hold harmless as set forth under this subsection shall apply to the negligence, recklessness or willful misconduct of any individual who qualifies as a "design professional" within the meaning of subsection (c)(2) of section 2782.8 of the California Civil Code in so far as such negligence, recklessness or willful misconduct occurs in the performance work or activities that must be



performed by a “design professional.” Subject to the limitation of the preceding sentence, to the fullest extent permitted by law, CONSULTANT shall immediately defend and indemnify and hold harmless the CITY Indemnities, defined above, from and against any and all liability, loss, damage, expense, cost (including without limitation reasonable attorneys’ fees, expert fees and all other costs and fees of litigation) of every nature arising out of the negligence, recklessness, or willful misconduct of CONSULTANT or any of CONSULTANT’s officers, employees, servants, agents, contractors, subcontractors or authorized volunteers or any other person or entity involved by, for, or with or on behalf of CONSULTANT in the performance of design professional services under this Agreement. The Parties understand and agree that the duty of CONSULTANT to indemnify, defend and hold harmless pursuant to this subsection includes the duty to defend as set forth in section 2778 of the California Civil Code. CONSULTANT’s obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, then CONSULTANT’s indemnification obligation shall be reduced in proportion to the established comparative liability.

4.3. Work of All Other Persons/Non-Design Professionals: Except as otherwise provided under Section 4.2 of this Article, above, to the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless the CITY Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys’ fees, expert fees and all other costs and fees of litigation) of every nature to the extent caused by CONSULTANT’s negligent performance under this Agreement, including but not limited to the negligent acts, errors or omissions of CONSULTANT or CONSULTANT’s officers, employees, agents, servants, contractors, subcontractors or subconsultants or the failure of the same to comply with any of the duties, obligations or standards of care set forth herein. The duty to indemnify, defend and hold harmless under this subsection shall not encompass a duty to indemnify, defend or hold harmless for liability, loss, suit, damage, expense, or cost caused by the negligence or willful misconduct of any or all of the City Indemnitees. The duty to indemnify, defend and hold harmless as set forth under this subsection is intended to encompass liabilities, losses, damages, expense and costs not otherwise subject to subsection 4.2, above.

4.4. As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, CITY shall have the right to offset against the amount of any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT’s failure to pay CITY promptly any indemnification arising under this Article and related to CONSULTANT’s failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers’ compensation laws.

4.5. As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, the obligations of CONSULTANT under this Article will not be limited by the provisions of any workers’ compensation act or similar act. CONSULTANT expressly waives its statutory immunity under such statutes or laws as to CITY and CITY’s elected and appointed officials, officers, employees, agents and authorized volunteers.

4.6. As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to

those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend CITY and CITY's elected and appointed officials, officers, employees, agents and authorized volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY's choice.

4.7. As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, CITY does not, and shall not, waive any rights that it may possess against CONSULTANT because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

4.8. As to the duties to indemnify under Sections 4.1 and 4.2 of this Article, above, the duties to indemnify, defend and hold harmless as set forth under this Section, shall survive the early termination or normal expiration of this Agreement and shall be in addition to any other rights or remedies which the CITY may have at law or in equity.

## 5.

### TERMINATION

5.1. TERMINATION WITHOUT CAUSE: CITY may immediately terminate this Agreement at any time for convenience and without cause by giving CONSULTANT written notice of CITY's intent to terminate this Agreement, which notice shall specify the effective date of such termination. Upon such termination for convenience, CONSULTANT shall be compensated only for those services and tasks which have been performed by CONSULTANT up to the effective date of the termination. CONSULTANT may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, CITY may require CONSULTANT to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONSULTANT in connection with the performance of the Work. CONSULTANT shall be required to provide such Documents and Data within fifteen (15) calendar days of CITY's written request. No actual or asserted breach of this Agreement on the part of CITY pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided under this Section.

### 5.2. EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of

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specified time or if no time is specified, within a reasonable time; (iii) CONSULTANT's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONSULTANT, whether voluntary or involuntary; (v) CONSULTANT's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) CITY's discovery that a statement representation or warranty by CONSULTANT relating to this Agreement is false, misleading or erroneous in any material respect.

- C. CITY shall cure any Event of Default asserted by CONSULTANT within forty-five (45) calendar days of CONSULTANT's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, CITY may submit a written request for additional time to cure the Event of Default upon a showing that CITY has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with CITY's failure to timely pay any undisputed sums to CONSULTANT as provided under Section 1.4, above, shall be cured by CITY within five (5) calendar days from the date of CONSULTANT's Default Notice to CITY.
- D. CITY, in its sole and absolute discretion, may also immediately suspend CONSULTANT's performance under this Agreement pending CONSULTANT's cure of any Event of Default by giving CONSULTANT written notice of CITY's intent to suspend CONSULTANT's performance (hereinafter, a "Suspension Notice"). CITY may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONSULTANT shall be compensated only for those services and tasks which have been rendered by CONSULTANT to the reasonable satisfaction of CITY up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of CITY shall operate to prohibit or otherwise restrict CITY's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to CITY at law or under this Agreement in the event of any breach of this Agreement, CITY, in its sole and absolute discretion, may also pursue any one or more of the following remedies:

- 5.4. SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

## MISCELLANEOUS PROVISIONS

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For internal purposes only:

Contract No. [REDACTED]

require all subcontractors and subconsultants working on behalf of CONSULTANT in the performance of this Agreement to agree in writing that CITY shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONSULTANT in the performance of this Agreement.

6.2. CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONSULTANT without prior written consent by CITY. CITY shall grant such consent if disclosure is legally required. Upon request, all CITY data shall be returned to CITY upon the termination or expiration of this Agreement. CONSULTANT shall not use CITY's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.

6.3. FALSE CLAIMS ACT: CONSULTANT warrants and represents that neither CONSULTANT nor any person who is an officer of, in a managing position with, or has an ownership interest in CONSULTANT has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., section 3789 et seq. and the California False Claims Act, Government Code section 12650 et seq.

6.4. NOTICES: All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

**CONSULTANT:**

*Name of Vendor*

Attn: [REDACTED]

Phone: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]

**CITY:**

City of El Monte

*Name of Department*

El Monte City Hall - West

11333 Valley Boulevard

El Monte, CA 91731

Attn: [REDACTED]

Phone: [REDACTED]

Fax: [REDACTED]

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepaid and addressed to the Party at its applicable address.

6.5. COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.

6.6. SUBCONTRACTING: CONSULTANT shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval



of CITY. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.

6.7. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS: CITY reserves the right to employ other contractors in connection with the various projects worked upon by CONSULTANT.

6.8. PROHIBITED INTERESTS: CONSULTANT warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONSULTANT, to solicit or secure this Agreement. Further, CONSULTANT warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

6.9. TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.

6.10. GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Los Angeles County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Central District of California located in the City of Los Angeles, California.

6.11. ATTORNEYS' FEES: If either Party commences an action against the other Party, whether legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.

6.12. SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.

6.13. NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.

6.14. CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.

6.15. SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

For internal purposes only:

Contract No.                     

6.16. AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to CITY approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.

6.17. CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.

6.18. INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.

6.19. ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between CITY and CONSULTANT prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.

6.20. COUNTERPARTS: .This Agreement shall be executed in three (3) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.16, above. One fully executed original counterpart shall be delivered to CONSULTANT and the remaining two original counterparts shall be retained by CITY.

**[SIGNATURE PAGE TO FOLLOW]**



For internal purposes only:

Contract No.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**CITY OF EL MONTE**

**NAME OF VENDOR HERE**

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

For internal purposes only:

Contract No.

**EXHIBIT “A”**  
**(SCOPE OF WORK)**